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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,823	12/21/2000	Philippe Lachaud	Q62379	6580

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SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

EXAMINER

PATEL, NIKETA I

ART UNIT	PAPER NUMBER
2181	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/740,823	<b>Applicant(s)</b> LACHAUD ET AL.	
	<b>Examiner</b> Niketa I. Patel	<b>Art Unit</b> 2181	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.


**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
 Supervisory FRITZ FLEMING  
 PRIMARY EXAMINER  
 GROUP 2100  
 Art 2181

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

5/25/06

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/08/2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

a. The specification fails to provide description of various types of 'means' recited in the independent claims 1 and 7. For example, (1) 'a communication means' is only described in the specification as 'communication means M,' however there is no explanation as to what type of communication is being used or how they are implemented. The specification fails to provide any sort of description as to where they

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are implemented, are they part of a computer system or a communication device or a server? (2) 'Means for receiving' is only described in the specification as 'receiving means G1 and G2,' and there is absolutely no explanation as to what type of means is used to receive information or how the information is received, (3) 'a new communication means,' is described in the specification as 'some other communication means,' however there is absolutely no explanation as to what type means are used or how it is implemented. Furthermore, these independent claims recite 'a communication module' and 'a new communication module,' however the specification fails to provide detailed description of what types of communication are used.

b. Claim 7, line 6-7 recites, 'said communication module being designed to give access to a different communication means,' however the specification fails to provide detailed description of what procedures are taken by the communicant module to provide access to a different communication means.

c. Claims 1 and 7 recite a limitation of "a piece of an object code of a distributed computing". It is unclear to the examiner as to the definition of a piece of an object code of a distributed computing, since the specification only states 'the communication modules are preferably encoded in a language such as Java that enables their object code to be caused to migrate through a distributed computer system' at page 5, lines 16-20. This section does not provide explanation of either the term 'a piece of an object code' or 'distributed computing.'

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- d. The specification fails to provide description of how the software agents C1 and C2 are connected to the communication server S, are they connected via network or a communication bus?
- e. The specification fails to provide description of the software agents and the location of these agents. It is unclear to the examiner as to the finality of the agents. Furthermore, it is unclear as to whether these software agents are resided in another computer or are they part of the communication server.
- f. The specification fails to provide description of the communication modules M1 and M2. It is unclear as to why type of modules are applicable, is the module a network interface card or a modem? Or is this a software module?
- g. It is unclear as to how the API (recited on page 4, line 9 of the specification) is related to the communication means or the communication agents. The specification completely fails to provide explanation for this matter.
- h. The specification fails to provide description of the programming interface I. It's unclear whether this is a type of user interface or an application interface. There is no description of how the programming interface is related to the software agents. It's unclear as to how a programming interface is used to communicate with software agents. Furthermore, if all of the communication modules have a programming interface and all the communication modules are able to use each other's programming interface, how are these communication modules able to access the programming interface? How is the communication module able to gain access to the common programming interface and

the specific programming interface. What is the difference between these programming interfaces?

i. Page 4, lines 26-27 of the specification recites 'the kind of communication means used', however fails to provide description of various types of communication means.

j. Page 4, lines 35-37 of the specification recites 'the communication server can replace the previous communication modules', however fails to provide description of how this replacement task is accomplished.

k. Page 5, line 3 of the specification recites 'some other communication means,' however fails to provide description of specific types of other communication means.

l. Page 5, line 8, of the specification recites 'Under such circumstances', how there is no description of any sort of circumstance.

m. Page 5, line 14-15 of the specification recites, 'communication means to be of a different kind'. Since the specification fails to disclose the type of a communication means used thus far, it is unclear to the examiner as to how the previous communication means is different from the 'blackboard type.'

n. Page 5, line 15 of the specification recites, 'blackboard type' communication means but fails to provide detailed description of a functionality of the blackboard type communication means.

o. Page 5, line 35 of the specification recites, 'a notification channel M,' however there is no description of why type of channels are used in this invention.

p. Page 6, line 1 of the specification recites, 'for some reason, the notification channel is interrupted,' this is extremely vague description of various types of

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interruptions. The specification must recite detailed description of the interruptions.

Furthermore, where are these interruptions coming from? Which element/device is sending the interruption?

q. Page 6, line 9 of the specification recites, 'message alr,' however does not define alr messages, therefore it is unclear what 'alr' stands for.

r. Page 6, line 12, of the specification recites 'these two messages,' it's unclear which messages are being referred to here since there is no mention of two different messages in previous paragraph.

s. Page 6, lines 36-37, of the specification recites 'warning due to some particular communication means,' this is vague description of communication means. The specification must recite detailed description specific types of communication means. Furthermore, detailed description of which device is sending the warning, how this warning is being sent and which device receives the warning and how this warning is interpreted in order to cause changeover.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

t. The specification fails to provide description of various types of 'means' recited in the independent claims 1 and 7. For example, (1) 'a communication means' is only

described in the specification as 'communication means M,' however there is no explanation as to what type of communication is being used or how they are implemented. The specification fails to provide any sort of description as to where they are implemented, are they part of a computer system or a communication device or a server? (2) 'Means for receiving' is only described in the specification as 'receiving means G1 and G2,' and there is absolutely no explanation as to what type of means is used to receive information or how the information is received, (3) 'a new communication means,' is described in the specification as 'some other communication means,' however there is absolutely no explanation as to what type means are used or how it is implemented. Furthermore, these independent claims recite 'a communication module' and 'a new communication module,' however the specification fails to provide detailed description of what types of communication are used.

u. Claim 7, line 6-7 recites, 'said communication module being designed to give access to a different communication means,' however the specification fails to provide detailed description of what procedures are taken by the communicant module to provide access to a different communication means.

v. Claims 1 and 7 recite a limitation of "a piece of an object code of a distributed computing". It is unclear to the examiner as to the definition of a piece of an object code of a distributed computing, since the specification only states 'the communication modules are preferably encoded in a language such as Java that enables their object code to be caused to migrate through a distributed computer system' at page 5, lines 16-20.



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This section does not provide explanation of either the term ‘a piece of an object code’ or ‘distributed computing.’

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The independent claims 1 and 7 recite a limitation of ‘a communication server,’ and ‘communication module’. The specification fails to indicate whether the communication server ‘S’ is hardware or software. The definition of server as given in *Microsoft Computer Dictionary* states that a serve on the Internet or other network can be a computer or a program that responds to commands from a client. As for the communication module, the specification clearly states that the communication module is software (see page 5, lines 16-17.)

As per the Interim Guidelines (pages 52-53), data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure’s functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and

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the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

**Note:** Due to the indefiniteness of claimed limitations and the lack of detailed description an art rejection is not applied.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niketa I. Patel whose telephone number is (571) 272 4156. The examiner can normally be reached on M-F 8:00 A.M. to 5:00 P.M.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fritz Fleming can be reached on (571) 272 4145. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner:  
Niketa Patel  
05/25/2006

*Supervisory*  
  
FRITZ FLEMING  
PRIMARY EXAMINER  
GROUP 2100  
5/16/2006  
AU 2181